

APPENDIX A

The following are the relevant provisions of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063-1077) which Act, as amended, now constitutes Part I of the Federal Power Act of August 26, 1935 (49 Stat. 838; 16 U. S. C. §§ 791a-823).

SEC. 3. That the words defined in this section shall have the following meanings for the purposes of this Act, to wit:

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"Net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission," plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expendi-

tures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the commission.

SEC. 4. That the commission is hereby authorized and empowered—(a)

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In order to aid the commission in determining the net investment of a licensee in any project, the licensee shall, upon oath, within a reasonable period of time, to be fixed by the commission, after the construction of the original project or any addition thereto or betterment thereof, file with the commission, in such detail as the commission may require, a statement in duplicate showing the actual legitimate cost of construction of such project, addition, or betterment, and the price paid for water rights, rights of way, lands, or interest in lands. The commission shall deposit one of said statements with the Secretary of the Treasury. The licensee shall grant to the commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto.

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SEC. 10.

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(d) That after the first twenty years of operation out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the actual,

legitimate investment of a licensee in any project or projects under license the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the commission for the purpose of reimbursing the United States for the costs of the administration of this Act; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the commission shall seek to avoid increasing the price to the consumers of power by such charges, and charges for the expropriation of excessive profits may be adjusted from time to time by the commission as conditions may require: *Provided*, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the commission shall fix a reasonable annual charge for the use thereof, and such charges may be readjusted at the end of twenty years after the beginning of operations and at periods of

not less than ten years thereafter in a manner to be described in each license: *Provided*, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than one hundred horsepower capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the commission.

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SEC. 14. That upon not less than two years' notice in writing from the commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which

is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by agreement between the commission and the licensee, and in case they cannot agree, by proceedings in equity instituted by the United States in the district court of the United States in the district within which any such property may be located: *Provided*, That such net investment shall not include or be affected by the value of any lands, rights of way, or other property of the United States licensed by the commission under this Act, by the license, or by good will, going value, or prospective revenues: *Provided further*, That the values allowed for water rights, rights of way, lands, or interest in lands shall not be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided*, That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon

payment of just compensation is hereby expressly reserved.

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SEC. 16. That when in the opinion of the President of the United States, evidenced by a written order addressed to the holder of any license hereunder, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any project, or part thereof, constructed, maintained, or operated under said license, for the purpose of manufacturing nitrates, explosives, or munitions of war, or for any other purpose involving the safety of the United States, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the party or parties entitled thereto; and in the event that the United States shall exercise such right it shall pay to the party or parties entitled thereto just and fair compensation for the use of said property as may be fixed by the commission upon the basis of a reasonable profit in time of peace, and the cost of restoring said property to as good condition as existed at the time of the taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the licensee.

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SEC. 19. That as a condition of the license, every licensee hereunder which is a public-service corporation, or a person, association, or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall abide by such reasonable regu-

lation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided*, That the jurisdiction of the commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission or other authority for the regulation and control of that specific matter.

SEC. 20. That when said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee, or by any subsidiary corporation, the stock of which is owned or controlled directly or indirectly by such licensee, or by any person,

corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable, nondiscriminatory, and just to the customer and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful; and whenever any of the States directly concerned has not provided a commission or other authority to enforce the requirements of this section within such State or to regulate and control the amount and character of securities to be issued by any of such parties or such States are unable to agree through their properly constituted authorities on the services to be rendered or on the rates or charges of payment therefor, or on the amount or character of securities to be issued by any of said parties, jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved, upon the request of any State concerned, or upon its own initiative to enforce the provisions of this section, to regulate and control so much of the services rendered, and of the rates and charges of payment therefor as constitute interstate or foreign commerce and to regulate the issuance of securities by the parties included within this section, and securities issued by the licensee subject to such regulations shall be allowed only for the bona fide purpose of financing and conducting the business of such licensee.

The administration of the provisions of this section, so far as applicable, shall be according to the procedure and practice in fixing and regulating the rates, charges, and practices of railroad companies as provided in the Act to regulate commerce, approved

February 4, 1887, as amended, and that the parties subject to such regulation shall have the same rights of hearing, defense, and review as said companies in such cases.

In any valuation of the property of any licensee hereunder for purposes of rate making, no value shall be claimed by the licensee or allowed by the commission for any project or projects under license in excess of the value or values prescribed in section 14 hereof for the purposes of purchase by the United States, but there shall be included the cost to such licensee of the construction of the lock or locks or other aids of navigation and all other capital expenditures required by the United States, and no value shall be claimed or allowed for the rights granted by the commission or by this Act.

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SEC. 23. That the provisions of this Act shall not be construed as affecting any permit or valid existing right of way heretofore granted, or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality, holding or possessing such permit, right of way, or authority may apply for a license hereunder, and upon such application the commission may issue to any such applicant a license in accordance with the provisions of this Act, and in such case the provisions of this Act shall apply to such applicant as a licensee hereunder: *Provided*, That when application is made for a license under this section for a project or projects already constructed, the fair value of said project or projects, determined as provided in this section, shall for the purposes of this Act

and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value may, in the discretion of the commission, be determined by mutual agreement between the commission and the applicant or, in case they can not agree, jurisdiction is hereby conferred upon the district court of the United States in the district within which such project or projects may be located, upon the application of either party, to hear and determine the amount of such fair value.

That any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce between foreign nations and among the several States, may in their discretion file declaration of such intention with the commission, whereupon the commission shall cause immediate investigation of such proposed construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction, such person, association, corporation, State, or municipality shall not proceed with such construction until it shall have applied for and shall have received a license under the provisions of this Act. If the commission shall not so find, and if no public lands or reservations are affected, permission is hereby granted

to construct such dam or other project works in such stream upon compliance with State laws.

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SEC. 26. That the Attorney General may, on request of the commission or of the Secretary of War, institute proceedings in equity in the district court of the United States in the district in which any project or part thereof is situated for the purpose of revoking for violation of its terms any permit or license issued hereunder, or for the purpose of remedying or correcting by injunction, mandamus, or other process any act of commission or omission in violation of the provisions of this Act or of any lawful regulation or order promulgated hereunder. The district courts shall have jurisdiction over all of the above-mentioned proceedings and shall have power to issue and execute all necessary process and to make and enforce all writs, orders, and decrees to compel compliance with the lawful orders and regulations of the commission and of the Secretary of War, and to compel the performance of any condition imposed under the provisions of this Act. In the event a decree revoking a license is entered, the court is empowered to sell the whole or any part of the project or projects under license, to wind up the business of such licensee conducted in connection with such project or projects, to distribute the proceeds to the parties entitled to the same, and to make and enforce such further orders and decrees as equity and justice may require. At such sale or sales the vendee shall take the rights and privileges belonging to the licensee and shall perform the duties of such licensee and as-

sume all outstanding obligations and liabilities of the licensee which the court may deem equitable in the premises; and at such sale or sales the United States may become a purchaser, but it shall not be required to pay a greater amount than it would be required to pay under the provisions of section 14 hereof at the termination of the license.

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SEC. 28. That the right to alter, amend, or repeal this Act is hereby expressly reserved; but no such alteration, amendment, or repeal shall affect any license theretofore issued under the provisions of this Act, or the rights of any licensee thereunder.

APPENDIX B

Section 313 (b) of the Federal Power Act of 1935, amending the Federal Water Power Act of 1920 (49 Stat. 838, 16 U. S. C. 825l (b)), provides:

Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Com-

mission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

APPENDIX C

Article V of the 1910 International Boundary Water Treaty between the United States and Canada (36 Stat. 2448, 2450) provides as follows:

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licenses authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.

The United Kingdom, by the Dominion of Canada, or the Province of Ontario,

may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

APPENDIX D

The following are the relevant provisions of the "Classification of Investment in Road and Equipment of Steam Roads, Issue of 1914, Interstate Commerce Commission," promulgated as a part of the Commission's own rules and regulations—Code of Federal Regulations, Title 18, part 103.

Section 103.02-1 of the "Classification" provides as follows:

ACCOUNTS FOR INVESTMENT IN ROAD AND EQUIPMENT.—The accounts prescribed in this classification are designed to show the investment of the carrier in property devoted to transportation service. The carrier's investment in physical property other than transportation property is provided for in balance-sheet account No. 705, "Miscellaneous physical property." *The carrier* means the accounting carrier, except when otherwise specifically indicated. The carrier's records shall be kept in such form that expenditures for additions and betterments may be reported separately from those for original road, original equipment, and road extensions, and shall show separately the expenditures under each authorized addition and betterment project. (See balance-sheet account No. 701, "Investment in road and equipment," and No. 702, "Improvements on leased railway property.")

Section 103.02-2 of the "Classification" provides:

ITEMS TO BE CHARGED.—To these accounts shall be charged the cost of original road, original equipment, road extensions, additions, and betterments; also the estimated values at time of acquisition of right of way and other road and equipment property donated to the carrier, except that unless authorized by the Commission no charges shall be made to these accounts after July 1, 1914, for donations received previously to that date. Applications to the Commission for including such items in the road and equipment accounts shall contain full information concerning the source and character of the donations.

If the total cost of additions and betterments to any class of equipment, or any class of fixed improvements (except tracks), under a general plan, considered as a whole, is less than \$200, the option may be exercised of charging the amount expended to the appropriate account in Operating Expenses. This rule is not to be construed as authorizing the parceling of expenditures in order to bring them within this limit.

Construction includes all processes connected with the acquisition and construction of original road and equipment, road extensions, additions, and betterments.

Original road means the land and fixed improvements provided and arranged for in the original plan for the construction of a new road. When the acquisition of any such fixed improvements under the original plan is deferred, such improvements, when acquired, shall be considered as additions. Original road shall not be construed to include fixed improvements which, under the original plans for the road, it is proposed

to substitute at some time subsequent to the beginning of commercial operations for the improvements originally installed and used for transportation operations, such as steel bridges substituted for trestles.

Original equipment means equipment provided and arranged for under the original plan for the construction of a new road. When the acquisition of such equipment under the original plan is deferred, such equipment, when acquired, shall be considered as additions.

Road extensions means the land and fixed improvements provided and arranged for in the original plan for the construction of extensions of existing main lines, additional branch lines, and extensions of existing branch lines. When the acquisition of any such fixed improvements under the original plan is deferred, such improvements, when acquired, shall be treated as additions. Road extensions shall not be construed to include fixed improvements which under the original plans for the extensions it is proposed to substitute, at some time subsequent to the beginning of commercial operations, for the improvements originally installed and used for transportation in connection with commercial operations, such as steel bridges substituted for trestles.

Equipment means the rolling stock, boats, highway vehicles, horses, and harness devoted to transportation service, the cost of which is includible in the equipment accounts.

Fixed improvements means structures which are fixed as to location, such as tunnels, bridges, buildings, earthworks, etc.

Additions are additional facilities, such as additional equipment, tracks (including timber and mine tracks), buildings, bridges, and other structures; additions to such facilities, such as extensions to tracks, buildings, and other structures; additional ties laid in existing tracks; and additional devices applied to facilities, such as air brakes applied to cars not previously thus equipped. When property, such as a section of road, track, unit of equipment, shop or power plant machine, building, or other structure, is retired from service and replaced with property of like purpose, the newly acquired property shall, for the purpose of this classification, be considered as an addition, and the cost thereof accounted for accordingly. (See section 103.02-7.) If, however, the property retired and replaced is of minor importance, such as a small roadway building or other structure, and is replaced in kind without betterment, the cost of the replacement shall be charged to Operating Expenses, and no adjustment made in the road and equipment accounts.

Betterments are improvements of existing facilities through the substitution of superior parts for inferior parts retired, such as the substitution of steel-tired wheels for cast wheels under equipment, the application of heavier rail in tracks, and the strengthening of bridges by the substitution of heavier members. The cost chargeable to the accounts of this classification is the excess cost of new parts over the cost at current prices of new parts of the kind retired. (See section 103.02-12.)

Costs shall be actual money costs to the carrier. Where a portion of the funds expended by the carrier has been obtained

through donations by States, municipalities, individuals, or others, no deductions on account of such donations shall be made in stating the costs. Contributions for joint expenditures should not be considered as donations. The carrier's proportion only of the cost of joint projects, such as construction of jointly owned tracks and elimination of highway crossings at joint expense, shall be included in these accounts.

Section 103.02-3 of the "Classification" provides:

BASIS OF CHARGES.—The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification is other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it. The carrier shall be prepared to furnish the Commission, upon demand, the particulars of its determination of the actual cash value of the consideration, if other than money.

Section 103.41 of the "Classification" provides:

COST OF ROAD PURCHASED.—This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for

the property purchased is other than cash, such consideration shall be valued on a current cash basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made.

This account shall be used only as a clearing account in which temporarily to carry the cost of road purchased until such time as a plan for distributing such cost to the primary accounts appropriate for the property is approved by the Commission.

NOTE A.—The appraised value of any equipment thus acquired shall be charged to the appropriate equipment accounts. The value, at time of purchase, of any securities, or other assets acquired, shall be included in the accounts appropriate for such assets. The par value of any liabilities assumed shall be included in the appropriate liability accounts, and the necessary adjustments between the cash value charged to the property accounts and the par value shall be made in the appropriate premiums or discount account.

NOTE B.—The carrier shall be prepared to furnish the Commission, upon demand, a full report of the contract of acquisition of each road, or portion thereof, purchased, and a statement showing in detail the consideration given therefor. It should procure, in connection with the acquisition of any such road and equipment, all existing records, memoranda, and accounts in possession or control of the grantor, relating to the construction and improvements of such road and equipment, and shall preserve such records, memoranda, and accounts until authorized by law to destroy or otherwise dispose of them. Where the records, memoranda, and accounts are so intimately involved with other records, memoranda, and accounts of the grantor as to make their transfer impracticable or inadvisable, certified copies of them shall be procured and retained by the grantee. The verity of the copies should be certified by the custodian of the originals.

APPENDIX E

LIST OF "FAIR VALUE" LICENSES

(1) Project No. 77, *Snow Mountain Water & Power Co., Licensee*, Staff reports have been served.

(2) Project No. 78, *Pacific Gas & Electric Co., Licensee*, "Fair Value" determined (See 5th Ann. Rep. of F. P. C. 103).

(3) Project No. 99, *Pacific Gas & Electric Co., Licensee*, "Fair Value" determined (See 13th Ann. Rep. of F. P. C. 186).

(4) Project No. 204, *Washington Water Power Co., Licensee*, "Fair Value" determined (See 4th Ann. Rep. of F. P. C. 165).

(5) Project No. 382, *Southern California Edison Co., Ltd., Licensee*, "Fair Value" determined (See 5th Ann. Rep. of F. P. C. 183).

(6) Project No. 408, *Sitka Wharf & Power Co., Inc., Licensee*, "Fair Value" determined (See 5th Ann. Rep. of F. P. C. 87).

(7) Project No. 415, *Southern Ohio Public Service Co., Licensee*, "Fair Value" determined (See 6th Ann. Rep. of F. P. C. 56).

(8) Project No. 738, *Fred and John F. Dover, Licensees*, "Fair Value" determined (See 8th Ann. Rep. of F. P. C. 123).

(9) Project No. 1250, *Southern California Edison Co., Ltd., Licensee*, Prior authority: Depart-

ment of Agriculture Permit (See 14th Ann. Rep. 160; 1 F. P. C. 633).

(10) Project No. 1318, *Sierra & San Francisco Power Co., Licensee*, Prior authority: Department of Agriculture Permits.

(11) Project No. 1333, *San Joaquin Light & Power Co., Licensee*, Prior authority: Department of Agriculture Permits.

(12) Project No. 1352, *Great Western Power Co., Licensee*, Prior authority: Department of Agriculture Permit.

(13) Project No. 1354, *San Joaquin Light & Power Corp., Licensee*, Prior authority: Department of Agriculture Permit.